IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SANDY BYRD, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2:18-cv-122-RAH-SRW
	)	
NANCY BUCKNER, in her Individual capacity and in her official Capacity as Commissioner of the Alabama Department of Human Resources, *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This case is one of many arising out of the Central Registry maintained by the Alabama Department of Human Resources (ADHR) that catalogues the investigative findings of reports of child abuse and neglect. Plaintiffs Sandy Byrd, Jonathan Ponstein, Leeann Ponstein, A.P. (a minor child of the Ponsteins), Monica Hardman and Matthew Lawrence allege that the ADHR officials deprived them of procedural due process when the ADHR placed their names on the Central Registry without hearings to challenge their designation. Before the Court is the Defendants' Motion to Dismiss the Plaintiffs' First Amended Complaint. (Doc. 38.) This motion is due to be granted in part.

II. JURISDICTION AND VENUE

Subject matter jurisdiction is exercised pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367. Personal jurisdiction and venue are not contested.

III. STANDARD OF REVIEW

A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint against the legal standard set forth in Rule 8: "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U. S. 544, 570 (2007)).

"Determining whether a complaint states a plausible claim for relief [is] ... a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 663 (alteration in original) (citation omitted). The plausibility standard requires "more than a sheer possibility that a defendant has acted unlawfully." *Id.* at 678. Conclusory allegations that are merely "conceivable" and fail to rise "above the speculative level" are insufficient

to meet the plausibility standard. *Twombly*, 550 U. S. at 555, 570. This pleading standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. Indeed, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id*.

IV. BACKGROUND

A. ADHR and the Central Registry

The ADHR is the state agency in Alabama responsible for investigation of all reports of suspected child abuse and neglect. Ala. Code (1975) § 26-14-6.1. Pursuant to its statutory authority, the ADHR has issued regulations and procedures for investigation and disposition of child abuse reports and for review, recording, and disclosure of the outcomes of child abuse investigations. Ala. Code (1975) § 26-14-12; Ala. Admin. Code r. 660-5-34-.01, *et seq*.

"Once a report of suspected child abuse/neglect has been received, it must be investigated." Ala. Admin. Code r. 660-5-34-.04 (4). Upon receipt of a report of child abuse or neglect, the state or county department of human resources promptly begins an investigation, which includes research into previous reports, home visits, and interviews with the child and custodial parents. Ala. Code (1975) § 26-14-7; Ala. Admin. Code r. 660-5-34-.05. After completing the investigation, the investigating social worker reaches a disposition as to whether the child experienced

abuse or neglect and also identifies the person responsible for the abuse or neglect. Ala. Admin. Code r. 660-5-34-.07.

The worker assigns one of the following dispositions to the report of abuse and to the person alleged to be responsible for the abuse: (1) "*Indicated*," which means that "a preponderance of the credible evidence ... and the professional judgment of the worker indicate that abuse/neglect has occurred;" (2) "*Unable to Complete*;" or (3) "*Not Indicated*," which means that "a preponderance of the credible evidence and professional judgment does not substantiate that abuse/neglect has occurred." *Id.*; *see also* Ala. Code (1975) § 26-14-8 (defining "indicated" and "not indicated").

The county department of human resources submits a complete written report of its investigation and disposition to the ADHR's statewide "Central Registry." Ala. Code (1975) § 26-14-7(d); Ala. Code (1975) § 26-14-8; Ala. Admin. Code r. 660-5-34-.09.

All persons who have been assigned an "indicated" disposition are given an opportunity to disagree with the ADHR's findings "through either a CA/N hearing or an administrative record review." Ala. Admin. Code r. 660-5-34-.08 (1)-(4). A CA/N hearing is "an internal investigatory hearing that is fact finding in nature and designed to elicit the facts in an atmosphere that allows the person accused of the abuse/neglect to contest the evidence presented against him [or her]." Ala. Admin.

Code r. 660-5-34-.08(6); *see also* Ala. Code (1975) § 26-14-7.1 (providing due process rights for certain persons such as educators who have come under ADHR investigation for child abuse or neglect). The ADHR bears the burden of persuasion at the CA/N hearing. Ala. Code (1975) § 26-14-7.1; Ala. Admin. Code r. 660-5-34-.08(6)(c).

Unlike a CA/N hearing, which is "fact finding in nature" and allows the accused to directly challenge the "indicated" disposition using evidence outside the administrative record, an administrative record review is limited to consideration of whether the ADHR's own administrative record "contains sufficient documentation based on a preponderance of credible evidence to support the 'indicated' disposition of child abuse/neglect." Ala. Admin. Code r. 660-5-34-.08(3). "Administrative record reviews are conducted by [ADHR] staff who are not involved with the case." Ala. Admin. Code r. 660-5-34-.08(7). An administrative record review does not allow the accused to be presented with the evidence against him or her, or to contest the "indicated" listing by presenting his or her own rebuttal evidence or argument. "The [administrative record] reviewers have the authority to overturn the dispositional finding of the worker and supervisor, *and their decision is final.*" *Id.* (emphasis added).

Because of the nature of their employment, certain individuals, such as teachers and educators, can obtain a CA/N hearing. Ala. Admin. Code r. 660-5-34-

.08(2). Everyone else cannot, and can only dispute an indicated disposition through an administrative record review. Ala. Admin. Code r. 660-5-34-.08(3).

The accused individual is afforded ten working days from receipt of the notice of an indicated disposition to submit a written request for either a CA/N hearing or an administrative record review, whichever of the two is available to that individual. Ala. Admin. Code r. 660-5-34-.08(4). If the ADHR receives no written request for review by the end of the ten-day period, the accused individual is considered to have waived review, and the "indicated" disposition is entered on the Central Registry. *Id.*

Once an "indicated" disposition is entered on the Central Registry, it is confidential, but it may be released under certain circumstances to employers, prospective employers, licensing and certifying agencies, *etc.* Ala. Code § 26-14-8; Ala. Admin. Code r. 660-5-34-.08(4); Ala. Admin. Code r. 660-5-34-.09.

Limited procedures are available for expungement[1] from the Central Registry of "not indicated" and (in narrower circumstances) "indicated" listings. Ala. Code (1975) § 26-14-8(e) (providing for expungement of "not indicated" listings upon request if, after five years after placing the listing on the Central Registry, the ADHR

[1] There *may* be limited procedures available for challenging an "indicated" disposition under the Alabama Administrative Procedure Act or a common law writ of certiorari or mandamus filed in the Circuit Court of Montgomery County, Alabama. The parties should address these potential procedures in later briefing in this case.

has received no further reports of child abuse or neglect); Ala. Admin. Code r. 660-5-34-.09(5)(i)-(j) (procedures for expungement of "indicated" and "not indicated" listings); *see also* Ala. Code § 26-14-3(e) ("[I]f any agency or authority investigates any report pursuant to this section [pertaining to reports by mandatory reporters] and the report does not result in a conviction, the agency or authority shall expunge any record of the information or report and any data developed from the record."); *Slaton v. State*, 71 So. 3d 659, 661 (Ala. Civ. App. 2011) (holding that Alabama Code (1975) § 26-14-3(e) applied to the investigatory record of the ADHR because the ADHR was "the agency or authority that investigated an allegation" of child sex abuse).

B. Parties

In a prior opinion issued in this case, the Court set out the primary facts as set forth in the Complaint. *See Byrd v. Buckner*, No. 2:18-cv-0122-WKW, 2018 WL 4286192 (M.D. Ala. Sept. 6, 2018). Although the Court required the Plaintiffs to file an amended complaint to restate their allegations with particularity, the Plaintiffs largely have not done so. Nevertheless, there are sufficient facts for the Court to proceed in the context of the Defendants' renewed Motion to Dismiss (Doc. 38), especially in the context of the legal issues as previously addressed by other courts

in Alabama on nearly identical claims and facts.[2]

> **Sandy Byrd:** Plaintiff **Sandy Byrd** is the mother of a minor child and *intends* to continue in her current employment and to pursue other employment and volunteer opportunities that require her to interact with minor children. (Doc. 36, p. 12, ¶ 23.) She alleges that the Shelby County Department of Human Resources (DHR) received a report alleging that Byrd had abused and/or neglected teenage children, that Defendants Kierra Carey and Corrine Matt participated in the investigation of Byrd, that Carey and Matt gave Byrd written notification of a preliminary finding of an "indicated" disposition and that Byrd could request a CA/N hearing. (Doc. 36, pp. 8-9, ¶¶ 19, 20.) Byrd further alleges that she made a proper request for a CA/N hearing but that Defendants Carey and Matt refused and ignored that request and therefore Byrd was listed on the Central Registry with an "indicated" disposition. (*Id*.) Finally, Byrd alleges that Defendant Kim Mashego, Carey and Matt have disclosed and publicized her listing on the Central Registry. (Doc. 36, p. 12, ¶ 23.)
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> **Jonathan and Leeann Ponstein, and their minor child, A.P. ("the Ponsteins"):** Plaintiffs **Jonathan Ponstein** and **Leeann Ponstein** are parents to two minor children, a minor daughter and minor son, A.P., and *intend* to be involved with their children's lives and to volunteer with organizations that provide services to minor children. (Doc. 36, p. 3, ¶¶ 7, 8; p. 12, ¶ 24.) A.P. attends school with other children and *intends* to pursue further educational opportunities, social activities and employment opportunities. (Doc. 36, p. 13, ¶ 26.) The Ponsteins, including A.P., allege that the Shelby County DHR received a report that they abused and/or neglected their minor daughter (A.P.'s sister), (Doc. 36, pp. 3-4, ¶ 7-9), that they have been listed on the Central Registry with an indicated disposition, and that Defendant Kim Mashego disclosed and publicized their listings. (Doc. 36, pp. 13-14, ¶¶ 24-27.) The Ponsteins further allege that their request for an administrative hearing to contest the indicated disposition was denied. (Doc. 36, p. 16, ¶ 32.)
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> **Monica Hardman:** Plaintiff **Monica Hardman** is a mother to two

[2] Although Kierra Kerry is listed as a defendant on the docket, service was not perfected on this individual. Consequently, she is not considered a party in this action.

minor children and *intends* to be involved with her children's lives and to volunteer with organizations that provide services to minor children. (Doc. 36, p. 14, ¶ 28.) She alleges she has been listed on the Central Registry with an "indicated" disposition which has been "disclosed and publicized by defendant." (Doc. 36, p. 14, ¶ 28.) Her request for an administrative hearing was denied.

Matthew Lawrence: Plaintiff **Matthew Lawrence** *intends* to be involved in the lives of children within his family and *intends* to volunteer with organizations that provide services to minor children. (Doc. 36, pp. 14-15, ¶ 29.) He asserts he has been listed on the Central Registry with an "indicated" disposition which has been "disclosed and publicized by defendant Carla Emmons." (Doc. 36, p. 15, ¶ 29.) His request for an administrative hearing was denied.

Nancy Buckner: Defendant **Nancy Buckner** is the Commissioner of the ADHR and supervises the operations of the ADHR. Plaintiffs allege that Buckner is responsible for establishing policies and procedures and ensuring that the ADHR operates in conformity with applicable law. (Doc. 36, p. 5, ¶ 12.)

Kim Mashego: Defendant **Kim Mashego** is the Director of the Shelby County DHR and supervises the operation of the Shelby County DHR. Plaintiffs allege that she is responsible for establishing procedures and ensuring that the Shelby County DHR operates in conformity with applicable law. (Doc. 36, p. 5, ¶ 13.)

Carla Emmons: Defendant **Carla Emmons** is the Director of the Bibb County DHR and supervises the operation of the Bibb County DHR. Plaintiffs allege that she is responsible for establishing procedures and ensuring that the Bibb County DR is in conformity with applicable law. (Doc. 36, p. 6, ¶ 16.)

C. Plaintiffs' Claims

1. Section 1983 – Declaratory and Injunctive Relief

(a) Byrd, the Ponsteins and Hardman request relief against Buckner and Mashego in their *official* capacities for declaratory and injunctive relief to remove their names from the Central Registry and to provide them

with administrative hearings because of the Defendants' "unlawful actions and conduct and deliberate indifference" stemming from the ADHR's custom, practice and policy;

(b) Lawrence requests relief against Buckner and Emmons in their *official* capacities for declaratory and injunctive relief to remove their names from the Central Registry and to provide them with administrative hearings because of the Defendants' "unlawful actions and conduct and deliberate indifference" stemming from the ADHR's custom, practice and policy.

2. Section 1983 – Monetary Damages:

(a) Byrd seeks damages against Mashego, Carey and Matt in their *individual* capacities for monetary damages for failing to transmit Byrd's request for a CA/N hearing to the Office of Administrative Hearings;

(b) Byrd seeks damages against Buckner and Matt in their *individual* capacities for establishing and maintaining policies and procedures denying her right to a hearing.

3. Negligence/Wantonness:

(a) Byrd asserts state law claims of negligence and wantonness against Mashego, Carey and Matt in their *individual* capacities for monetary damages for failing to transmit Byrd's request for a CA/N hearing to the Office of Administrative Hearings;

(b) Byrd asserts state law claims against Buckner and Mashego in their *individual* capacities for failing to withhold Byrd's indicated disposition from the Central Registry until after Byrd had her CA/N hearing.

4. Negligent Training, Supervision and Retention: Byrd asserts state law claims of negligent training, supervision and retention against Buckner and Mashego in their *individual* capacities as supervisors for monetary damages.

5. State Law Injunctive Relief: All Plaintiffs request injunctive relief from the Defendants in their *official* capacities for listing them on the Central Registry with "indicated" dispositions while continuing to deny them an

administrative hearing to dispute their listings.

V. DISCUSSION

A. The Section 1983 Claims for Monetary Damages and Injunctive and Declaratory Relief.

Counts I and II are claims brought by all Plaintiffs under Section 1983, with Count I seeking injunctive and declaratory relief and Count II seeking monetary damages. Both counts are premised, in general, upon the core allegation that being identified on the Central Registry with an "indicated" disposition creates a stigma of being labeled a perpetrator of child abuse or neglect that harms the individual's reputation and burdens his or her ability to pursue employment, life, family activities, and exploits that are available to citizens of the State of Alabama. They claim that the Defendants denied each of them an administrative hearing that would have allowed each plaintiff to challenge the allegations asserted against them before being listed on the Central Registry. In other words, the Plaintiffs assert that the Defendants, who were state actor employees, deprived them of their liberty without due process of law, in contravention of the Due Process Clause of the 14th Amendment.

To state a Section 1983 claim for the denial of procedural due process, a plaintiff must allege (1) a deprivation of a constitutionally protected property or liberty interest; (2) state action; and (3) constitutionally inadequate process. *J.R. v. Hansen*, 736 F.3d 959, 965 (11th Cir. 2013); *Miccosukee Tribe of Indians v. United States*, 716 F.3d 535, 559 (11th Cir. 2013). A claim for denial of procedural due process is actionable under Section 1983 "only when the state refuses to provide a process sufficient to remedy the procedural deprivation." *McKinney v. Pate*, 20 F.3d 1550, 1557 (11th Cir. 1994). "It is the state's failure to provide adequate procedures to remedy the otherwise procedurally flawed deprivation of a protected interest that gives rise to a federal procedural due process claim." *Cotton v. Jackson*, 216 F.3d 1328, 1331 (11th Cir. 2000) (citations omitted). Thus, "the mere failure to follow state procedures does not necessarily rise to the level of a violation of federal procedural due process rights." *Maddox v. Stephens*, 727 F.3d 1109, 1124 n. 15 (11th Cir. 2013).

Here, the Plaintiffs allege that the placement of their names with "indicated" dispositions on the Central Registry without the benefit of an administrative hearing results in the deprivation of a protected liberty interest under the "stigma-plus" test of *Paul v. Davis*, 424 U.S. 693 (1976). Under the "stigma-plus" test, "a plaintiff claiming a deprivation based on defamation by the government must establish the fact of the defamation 'plus' the violation of some more tangible interest before the

plaintiff is entitled to invoke the procedural protections of the Due Process Clause." *Behrens v. Regier*, 422 F.3d 1255, 1260 (11th Cir. 2005) (citation omitted). To satisfy the "stigma-plus" test, "the individual must be not only be stigmatized but also stigmatized in connection with a denial of a right or status previously recognized under state law." *Smith ex rel Smith v. Siegelman*, 322 F.3d 1290, 1296 (11th Cir. 2003); *see also Cypress Ins. Co. v. Clark*, 144 3d 1435, 1436 (11th Cir. 1998) (the stigma-plus test "requires a plaintiff to show that the government official's conduct deprived the plaintiff of a previously recognized property or liberty interest in addition to damaging the plaintiff's reputation").

Without question, an "indicated" disposition is stigmatizing, at least to the extent that the disposition may be published or disseminated to third parties. *Smith*, 322 F.3d at 1296. However, stigma alone is not sufficient to establish a constitutional deprivation of a protected liberty interest that warrants due process protections. *Id*. There must be specific allegations of fact from which it can be inferred that plaintiffs were "stigmatized in connection with a denial of a right or status previously recognized by state law," *i.e.*, a sufficient liberty interest. *Id*.

Therefore, to prevail on a § 1983 claim for reputational injury to a liberty interest, the Plaintiffs must meet the "stigma-plus" test by demonstrating not only that they were stigmatized, but also that "a right or status previously recognized by state law was distinctly altered or extinguished" in connection with the stigma. *Paul*

v. Davis, 424 U.S. 693 (1976).

1. The Request for § 1983 Monetary Damages (Count II)

As to Count II, the Defendants in their Motion to Dismiss argue the Plaintiffs have not suffered injury to a constitutionally protected liberty interest to support their § 1983 claims for monetary damages.

There is no question that the child sexual abuse allegations may stigmatize a person and give rise to a liberty interest. Nevertheless, precedent from the Eleventh Circuit Court of Appeals and this Court clearly indicate that stigmatization by itself is insufficient to rise to the level of a protected liberty interest.

In the context of litigation over indicated dispositions reported on the ADHR's Central Registry, Alabama state and federal courts already have spoken to the stigma-plus issue, and this Court need not review it with any detail. *See*, *e.g.*, *Smith ex rel. Smith*, 322 F.3d 1290 (11th Cir. 2003); *Duran v. Buckner*, 157 So. 3d 956 (Ala. Civ. App. 2014); *Ogles v. Buckner*, No. 2:14-CV-00641-MHH, 2015 WL 4488353 (N.D. Ala. July 22, 2015); *Collier v. Buckner*, F.Supp.3d 1232, 1266-67 (M.D. Ala. 2018). This analysis has included judicial consideration of vague and speculative allegations by claimants of possible future impacts on employment, education, volunteering, extracurricular activities, and family interaction, which generally have been held to be insufficient to meet the "plus" level of a constitutional

injury.

Like most of the plaintiffs in the related litigation over the Central Registry, the Plaintiffs, here, do not allege that they already have been denied a recognized constitutional right. Instead, they point to possible future deprivations. Thus, the Plaintiffs' Section 1983 claims for monetary damages fail to meet the stigma-plus burden, and they fail to meet Article III standing from the perspective of an injury-in-fact. *See, e.g.*, *Collier v. Buckner*, 303 F. Supp. 3d at 1250; *Smith ex rel Smith*, 322 F.3d 1290 (11th Cir. 2003).

Even more elemental, the Amended Complaint does not sufficiently allege disclosure of the Plaintiffs' "indicated" dispositions on the Central Registry to a third-party. Instead, the Amended Complaint only alleges that each of the Plaintiffs' listings "could be disclosed and disseminated" or vaguely that their listings "[have] been disclosed and publicized." (Doc. 36, pp. 9, 12-15). These allegations are completely void of any detail, such as the dates of disclosure or to whom they were disclosed or publicized. Under traditional *Iqbal/Twombly* considerations, of which the Plaintiffs already have been notified (*see* Doc. 32), the Amended Complaint, therefore, insufficiently pleads the deprivation of a constitutionally protected liberty interest from a pleading standpoint.

Therefore, based on this Court's review of Count II, which does not materially differ from the allegations plead by the plaintiffs in *Smith*, *Ogles*, *Duran* and *Collier*,

the Plaintiffs have failed to sufficiently plead the deprivation of a liberty interest protected by due process to support a Section 1983 claim for monetary damages. Accordingly, Count II is due to be dismissed.

2. The Request for § 1983 for Declaratory and Injunctive Relief (Count One)

Count I is a tangle of claims[3] by all Plaintiffs against all Defendants in their official capacities for "unlawful actions and conduct and deliberate indifference" because the Defendants have established and maintained a custom, practice or policy that has resulted in the denial of requests for hearings before placement of their indicated dispositions on the Central Registry. (Doc. 36, pp. 15-19.) They seek declaratory and injunctive relief directing the Defendants to remove the Plaintiffs' names from the Central Registry and to afford them a due process hearing for purposes of challenging their indicated dispositions. (Doc. 36, pp. 20-21.) Byrd, the Ponsteins and Hardman direct their claims against Buckner and Mashego, while Lawrence directs his claim against Buckner and Emmons.

[3] In comparing Count I against the counts filed by Plaintiffs' counsel in other cases against the ADHR, it appears counsel has chosen to combine into one count what he previously would separately plead via multiple counts in other cases. *See, e.g., Stevens v. Buckner*, No. 2:16-CV-456-MHT-DAB, 2018 WL 1100899, at *2–3 (M.D. Ala. Jan. 30, 2018), report and recommendation adopted, No. 2:16CV456-MHT, 2018 WL 1073137 (M.D. Ala. Feb. 27, 2018)(discussing Count I for injunctive relief, Count II for declaratory relief, and Count III for deliberate indifference).

These same allegations were brought by the plaintiffs in *Collier*, 303 F. Supp. 3d at 1266–67, and *Thomas v. Buckner*, No. 2:11-CV-245-WKW, Doc. 47 (M.D. Ala. Sept. 11, 2012), and were the subject of similar motions to dismiss by the ADHR defendants. In both cases, Judge Keith Watkins concluded that the defendants' motions to dismiss were due to be denied as it concerned the plaintiffs' claims against the individual defendants in their official capacities for prospective relief. In particular, Judge Watkins concluded that the plaintiffs had sufficiently alleged claims for prospective relief and a liberty interest in employment, family integrity, in establishing a home, and in bringing up and educating their children. This Court agrees with Judge Watkins' logic in *Collier* and *Thomas* and, accordingly, as it concerns Count I, the Defendants' motion to dismiss is due to be denied.

Although the Court is denying the Defendants' motion to dismiss Count I on the same grounds announced by Judge Watkins in *Collier* and *Thomas* concerning the claims for prospective relief, this Court's decision to follow the logic in *Collier* and *Thomas* should not be construed as this Court's finding that the administrative record review process is constitutionally inadequate as Judge Watkins did in *Collier* and *Thomas*. It appears that, at the point he ruled in both cases, the parties failed to thoroughly address, if they did at all, the issue of whether the plaintiffs could challenge their "indicated" dispositions after an administrative record review

through an appeal under the Alabama Administrative Procedure Act or a common law writ of certiorari or mandamus filed in the Circuit Court of Montgomery County, Alabama. The Court expects the parties to thoroughly address that issue in subsequent motion practice in this case.[4]

B. <u>The State Law Negligence and Wantonness Claims (Count Three)</u>

Count III is a state law claim for negligence and wantonness. In it, Plaintiff Byrd[5] seeks compensatory and punitive damages from all Defendants, except for Emmons, for breach of alleged duties associated with the Defendants' failure to forward Byrd's request for a CA/N hearing to the Administrative Office of Hearings and for Buckner and Mashego's failure to withhold Byrd's name from the Central Registry until Byrd's hearing had been conducted. (Doc. 36, pp. 24-25.)

This claim is due to be dismissed for lack of Article III standing.[6] To establish standing in the context of Article III, a plaintiff must allege an (1) injury in fact—an

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[4] This Court is now presiding over the *Collier* case and has ordered the parties to submit new and additional briefing directed to that issue.

[5] This count appears to be advanced by Byrd only. To the extent it is intended to include the other plaintiffs, the count clearly fails to state a claim upon which relief can be granted as to them and therefore is due to be dismissed.

[6] To the extent the Defendants assert qualified or state agent immunity in defense of these claims, the Court chooses not to address these arguments since the count is due to be dismissed for other reasons.

invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) that the injury is fairly traceable to the challenged act; and (3) that it is likely, as opposed to merely speculative that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotation marks omitted). *See also, Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc*., 528 U.S. 167, 180-181 (2000) (holding that, to establish standing, plaintiffs must show they have "suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical").

Plaintiff Byrd seeks monetary damages from the Defendants in their individual capacities on grounds that the Defendants in various ways are responsible for the failure to forward Byrd's hearing request to the Office of Administrative Hearings. Byrd does not allege, however, that she has suffered any concrete injuries at this point in time, aside from the fact that her name is listed on the Central Registry. In fact, other than a vague reference in the Amended Complaint to disclosure and dissemination, Byrd provides no specification or detail whatsoever as to the recipient, if anyone, of any negative information against her. These allegations are insufficient to satisfy Byrd's obligations to show standing. Accordingly, all negligence and wantonness claims of Byrd against these Defendants in their individual capacities are due to be dismissed.

Further, Byrd has not demonstrated that the Defendants owed her a legal duty not to place her name with an "indicated" disposition on the Central Registry prior to an administrative hearing—only that they had a duty to provide her with a hearing to "clear her name" in conjunction with the release of the "indicated" status to third parties. *Campbell v. Pierce Cty., Ga. By & Through Bd. of Comm'rs of Pierce Cty.*, 741 F.2d 1342, 1344 (11th Cir. 1984) (noting that where only a liberty interest is implicated, the plaintiff must be afforded an informal hearing to "clear his [or her] name", which need not occur prior to the disclosure to third parties of information adverse to the plaintiff); *see also* Ala. Admin. Code r. 660-5-34-.09(e)(1)(ii), (v) (providing that, except in emergency circumstances not applicable in this case, an "indicated" disposition may be released to employers only after "final disposition as determined by due process"). Accordingly, Count III does not state a claim against any of the Defendants for prematurely placing Plaintiff Byrd's "indicated" disposition on the Central Registry.

C. The State Law Claims of Negligent Training, Supervision and Retention (Count Four)

Count IV is a state law claim by Plaintiff Byrd against Defendants Buckner and Mashego in their individual capacities for negligent training, supervision, and retention.

Under Alabama law, the torts of negligent or wanton entrustment, hiring,

training, supervision, and retention all require a plaintiff to show an employer knew or should have known its employee was incompetent. *See Buckentin v. SunTrust Mortg. Corp*., 928 F.Supp.2d 1273, 1288 (N.D. Ala. 2013) (citing *Britt v. USA Truck, Inc.*, No. 2:06-cv-868-ID, 2007 WL 4554027, at *4 (M.D. Ala. Dec. 20, 2007) (negligent or wanton entrustment and negligent hiring, supervision, and retention); *Armstrong Bus. Servs. v. AmSouth Bank*, 817 So. 2d 665, 682 (Ala. 2001) (negligent supervision); *Bruck v. Jim Walter Corp.*, 470 So. 2d 1141, 1144 (Ala. 1985) (negligent or wanton entrustment); *Brown v. Vanity Fair Mills, Inc*., 277 So. 2d 893, 895 (1973) (negligent hiring, retention, and entrustment).

In Alabama, a plaintiff may not bring a claim against an employee for negligent supervision and training of a subordinate. *See, e.g., Hand v. Univ. of Ala. Bd. of Trustees*, 304 F.Supp.3d 1173, 1182 (N.D. Ala. 2018) ("Alabama law does not recognize a cause of action against a supervisor for that supervisor's negligent training or supervision of a subordinate."); *Brannon v. Etowah Cnty. Court Referral Program, LLC*, 325 F.R.D. 399, 427 (N.D. Ala. 2018) (finding that a supervisor "cannot be liable for negligent training or supervision because the ECCRP is the employer and not her"); *Doe v. City of Demopolis*, 799 F. Supp. 2d 1300, 1312 (S.D. Ala. 2011), *aff'd sub nom. Doe ex rel. Doe v. City of Demopolis*, 461 F. App'x 915 (11th Cir. 2012) (recognizing no negligent supervision or training claim against supervisor under Alabama law).

Here, Count IV suffers from several issues that merit its dismissal. First, Buckner and Mashego, as employees and not employers, cannot be sued for negligent hiring, training or supervision.

Second, the tort, although independent, necessarily requires a valid underlying state tort. Here, the underlying state tort is Byrd's claim for negligence, and as already discussed, that claim is due to be dismissed due to lack of jurisdiction and lack of a duty.

Third, the Amended Complaint contains no facts to support any allegations that the ADHR, Buckner or Mashego knew or should have known that an employee was incompetent, inclined to be negligent, or incapable of responsibly performing his or her job duties. In fact, the Plaintiffs do not even identify the name of the allegedly negligent employee. Because their Amended Complaint does not correct the pleading deficiencies of which the Plaintiffs already were aware and had an opportunity to correct, this claim is due to be dismissed pursuant to Rule 12(b)(6). *See Bush v. J.P. Morgan Chase Bank, N.A.*, No. 2:15-CV-00769-JEO, 2016 WL 324993, at *9 (N.D. Ala. Jan. 27, 2016) (dismissing negligent or wanton training and supervision claims pursuant to Rule 12(b)(6) where amended complaint was devoid of facts regarding what notice employer had of employees alleged incompetency).

D. Count Five (State Law Claim for Injunctive Relief)

Count Five is a state law claim for injunctive relief based on the wrongful acts of Buckner, Mashego and Emmons in establishing policies and procedures that have resulted in the listings of the Plaintiffs' names with "indicated" dispositions on the Central Registry without the benefit of an administrative hearing. Plaintiffs seek a state-law based injunction against the continued maintenance of their names on the Central Registry and an injunction requiring that they be afforded a hearing to challenge their "indicated" dispositions.

An injunction is a remedy, not a separate claim or cause of action. *See Martin v. Patterson*, 975 So. 2d 984, 990 (Ala. Civ. App. 2007). To obtain a permanent injunction, the movant must first prevail on the merits of the underlying claim. *Id.*

As it concerns the injunctive relief claim of the Ponsteins, Hardman and Lawrence, the Amended Complaint advances no underlying state law claims. Instead, the state law claims of negligence/wantonness and negligent retention/training and supervision are advanced by Plaintiff Byrd only. Accordingly, Count Five as it concerns the Ponsteins, Hardman and Lawrence fails to state a claim and is due to be dismissed.

Also, since Defendant Emmons was employed with the Bibb County DHR and was involved in the investigation of Plaintiff Lawrence, not Byrd, and since the Court already has concluded that Lawrence cannot maintain a state law injunctive

relief claim, then it naturally follows that Count Five against Emmons is also due to be dismissed for failure to state claim.

Finally, dismissal is also appropriate as to Plaintiff Byrd's state law injunctive relief claim against Buckner and Mashego because Byrd cannot prevail on the merits of her underlying claim for negligence for the reasons that already have been discussed; that is, lack of jurisdiction due to lack of standing and the lack of a duty.

Accordingly, the motion to dismiss is due to be granted as to all requests for injunctive relief in Count Five.

VI. CONCLUSION

Accordingly, it is ORDERED as follows:

1. The Motion to Dismiss is DENIED as to Count One. (Doc. 38.)

2. The Motion to Dismiss the remaining claims is GRANTED, and Counts Two, Three, Four and Five are dismissed with prejudice. (Doc. 38.)

3. Corrine Matt and Kierra Carey are dismissed as defendants.

DONE, this 28th day of April, 2020.

/s/ R. Austin Huffaker, Jr.
R. AUSTIN HUFFAKER, JR.
UNITED STATES DISTRICT JUDGE